

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SCOTT RODGERS)	
Plaintiff)	
)	CIVIL ACTION NO.: 04-11842-PBS
V.)	
)	
CORRECTION OFFICER ORCHID,)	
UNKNOWN CORRECTION OFFICER)	
JOHN DOE, JOE WHITMORE, DR.)	
HOWARD, JOHN SMITH, PLYMOUTH)	
COUNTY)	
Defendants)	

**MOTION OF THE DEFENDANT, JOHN B. HOWARD, M.D., FOR SUMMARY
JUDGMENT**

Now comes the defendant, John B. Howard, M.D. ("Dr. Howard"), and moves for summary judgment as to all counts against him in the plaintiff's Complaint pursuant to Fed. R. Civ. P. 56(b).

In support of this motion, the defendant states that the plaintiff has brought this action in Federal Court against four individuals, as well as against an unidentified defendant and against Plymouth County, Massachusetts, seeking to recover money damages for alleged violations of state and federal constitutional and statutory law. Counts I and III of the Complaint allege claims against Plymouth County under the State Tort Claims Statute, Mass. G.L. c. 258, and under 42 U.S.C. § 1983. Count II of the Complaint alleges violations of 42 U.S.C. § 1983 against the individual defendants, and Count IV alleges violations of the Massachusetts Civil Rights Act, Mass. G.L. c. 12, § 11I, against all defendants.

The plaintiff alleges, among other things, that Dr. Howard's treatment of him violated his right to be protected against cruel and unusual punishment, as protected by the Eighth and Fourteenth Amendments to the U.S. Constitution, and that Dr. Howard violated federal or state

rights through the use of threats, intimidation, or coercion, as prohibited under Mass. G.L. 12, § 11I.

The evidence presented in this matter demonstrates that the plaintiff will be unable to prove that Dr. Howard was deliberately indifferent to a serious medical need. Furthermore, the plaintiff will be unable to prove that Dr. Howard violated, or attempted to violate, any of the plaintiff's protected civil rights through the use of threats, intimidation, or coercion. Therefore, Dr. Howard is entitled to summary judgment on all counts of the plaintiff's Complaint.

WHEREFORE, for the foregoing reasons and those stated in the attached Memorandum in Support, the defendant, John B. Howard, M.D., respectfully requests that this Court grant summary judgment in his favor as to all counts of the plaintiff's Complaint.

REQUEST FOR ORAL ARGUMENT

The defendant requests oral argument on this motion, unless the Court sees fit to allow the defendant's motion without hearing.

Respectfully submitted,

/s/Edward F. Mahoney

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CERTIFICATE OF SERVICE

I, Edward F. Mahoney, counsel for defendant, John B. Howard, MD hereby certify that on the 11th day of September, 2006, I served the foregoing by electronically forwarding a copy thereof, to:

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